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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/630,141

07/30/2003

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47079-00107USD2

9474

70243

7590

09/30/2009

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EXAMINER

YOO, JASSON H

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

09/30/2009

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/630,141
Filing Date: July 30, 2003
Appellant(s): GIOBBI, JOHN J.

Wayne L. Tang
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/24/09 appealing from the Office action mailed 4/28/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 6908387	Hedrick	6-2005
US 6536658	Rantze	3-2003
US 5923252	Sizer	6-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 101-104, 106-125 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hedrick et al. (US 6,908,387) in view of Rantze (US 6,536,658) and in view of Sizer et al. (US 5,923,252).

Hedrick discloses a method of operating a gaming terminal (100 in Fig. 1) by establishing a wireless transmission link with a portable data unit carried by an individual (cols. 5:56-6:6, 10:45-11:5, 17:44-18:2). The portable data unit stores player tracking information and transfers player tracking information to the gaming machine (col. 17:44-66). The player tracking information is used during a player tracking session to associate player's game play with the player's account (col. 17:34-18:5). The gaming machine detects the portable data unit within a predetermined distance (cols. 10:57-11:25). Hedrick also discloses the gaming machine operates in an attract mode upon sensing a player in proximity of the gaming machine (col. 12:23-30).

However, Hedrick fails to teach the attract mode occurs in response to detecting a portable data unit carried by a user within a first predetermined distance or time, and a play mode occurs in response to detecting a portable data unit carried by a user within a second predetermined distance or time, wherein the first distance or time is different than the second predetermined distance or time.

Nevertheless, the method of operating a device in different modes is well known in the art. In an analogous art to automatically detecting users to operate a device, Rantze discloses a method of changing operation modes depending on the actual distance of a user and movement of the user (abstract, cols. 2-4, 11:38-53). More specifically, Rantze discloses a method of operating retail terminal such as a kiosk. When a person is at a predetermined distance, the kiosk would operate in an attract mode by playing a sound clip (cols. 2:41-45, 5:1-3). As the user approaches the kiosk, the information on the screen changes (col. 2:46-48, 5:1-3). Rantze's method of operating the kiosk at different modes based on different distances allows the apparatus to operate more effectively by accommodating the user.

Therefore it would have been obvious to one of ordinary skilled in the art at the time invention was made to modify Hedrick's method of operating a gaming terminal by establishing a wireless transmission link with a portable data unit and incorporate Rantze's method of operating a device differently based on the user's distance in order to operate the gaming device more effectively based on the user's location.

It is noted that Hedrick's detection method involves a portable device unit (as claimed) whereas Rantze's detection method involves a transmitter to transmit

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waveforms of different frequencies that reflect from objects around the operating device. However the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference. Rather, the test is what the combined teaching of those references would have suggested to those of ordinary skill in the art. *In re Keller*. See also MPEP 2145 III *Arguing that prior art devices are not physically combinable*. In this case, as discussed above, Rantze reference is relied upon to teach the method of operating a device at different modes based on different distances. One of ordinary skilled in the art would know how to modify's Hedrick's detection system and incorporate Rantze's method of operating a device at different modes based on different distance accordingly.

Furthermore, Hedrick's system and Rantze's system are both directed to a detection system to operate a device. One of ordinary skilled in the art would know that the specific type of detection system (i.e. using a card, transmitter, etc.) can be substituted for another. This is also taught by Sizer. Sizer discloses a system where a device (audio and video device) is operated based on the detection of a person. More specifically Sizer discloses audio and video messages are provided to a person upon the detection of the person (see abstract). Different messages can be provided depending upon the location of the person (col. 17:16-27).

Sizer discloses different type of detection means can come in many form (i.e. pad position at predetermined location, user characteristic detection means, smart cards, RF cards, cols. 3:57-67, 6:4-17).

Hedrick in view of Rantze and Sizer further discloses the following:

Claim 101. Hedrick discloses **a method of operating a gaming terminal** (Hedrick, 100 in Fig. 1), **comprising:**

establishing a wireless transmission link with a portable data unit carried by an individual (Hedrick discloses an individual carries a portable wireless device which wirelessly communicates with the gaming machine, cols. 5:56-6:6, 10:45-11:5, 17:44-18:2.), **the portable data unit storing information associated with the individual** (Hedrick discloses the portable data unit stores player tracking information associated with the player, cols. 5:56-6:6, 17:44-18:5.);

transmitting the information associated with the individual to the gaming terminal (Hedrick discloses the information is transmitted wirelessly when the player is near the gaming terminal, cols. 5:56-6:6, 10:45-11:5, 17:44-18:2.);

in response to the transmitting changing the operation of the gaming terminal to a first mode associated with the individual (Hedrick discloses operating a first mode being an attract mode to attract an individual, Hedrick, col. 12:23-20.) **or a second mode associated with the individual** (Hedrick discloses operating a second mode being a player tracking session mode associated with the player's account, col. 17:34-18:5.), **the first mode being different from the second mode** (Hedrick's attract mode and player session mode are different modes.) **for which the portable data unit is detected as being in the presence of the gaming terminal** (As discussed above, Hedrick discloses that a user is detected by detecting a portable wireless device and

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transferring player tracking information stored on the portable wireless device, cols.

5:56-6:6, 10:45-11:5, 17:44-18:2.).

Hedrick discloses the claimed invention as discussed above but fails to that the operation changes based depending upon at least one of a distance between the portable data unit and the gaming terminal and a period of time. Nevertheless, in an analogous art to operating electrical device, Rantze discloses that the **operation for the terminal changes based on at least the distance of the detection of a user** (Rantze, cols. 2:39-48, 4:18-21, 4:29-32, 5:1-3.). Rantze's method of operating the kiosk at different modes based on different distances allows the apparatus to operate more effectively by accommodating the user. Therefore it would have been obvious to one of ordinary skilled in the art at the time invention was made to modify Hedrick's method of operating a gaming terminal by establishing a wireless transmission link with a portable data unit and incorporate Rantze's method of operating a device differently based on the user's distance in order to operate the gaming device more effectively based on the user's location. Although Hedrick's detection system is directed to a wireless device, and Rantze detection system is directed to proximity detectors, Sizer suggest that different type of detection system can equally be used (col. 3:58-67) to operate an electrical device in different modes (col. 17:16-26), including wireless portable devices (col. 6:11-17). Thus Sizer teaches that it would have been obvious to modify Hedrick's method of operating a gaming terminal by establishing a wireless transmission link with a portable data unit and incorporate Rantze's method of operating an electronic device at different modes based on different distances.

Claim 102. Hedrick, discloses **a method of operating a gaming machine** (Hedrick, gaming machine 100 in Fig. 1), **comprising:**

detecting, via the gaming machine, the presence of a passerby proximate to the gaming machine (Hedrick discloses an individual carrying a portable wireless device proximate to the gaming machine is detected via a gaming machine which allows the portable wireless device to wirelessly communicate with the gaming machine, cols. 5:56-6:6, 10:45-11:5, 17:44-18:2.), **the passerby not playing the gaming machine** (Hedrick disclose the detection occurs before the player tracking session begins and thus before the player plays the gaming machine, col. 17:44-18:22), **the detecting including establishing a wireless transmission link between a first wireless transceiver in the gaming machine and a second wireless transceiver disposed in a portable data unit carried by the passerby** (Hedrick, cols. 5:56-6:6), **the portable data unit including information for allowing an identity of the passerby to be determined** (Hedrick discloses the portable data unit stores player tracking information associated with the player, cols. 5:56-6:6. 17:44-18:5.);

in response to the detecting the presence of the passerby by at least one of detecting the presence of the passerby (Hedrick discloses that a user is detected by detecting a portable wireless device and transferring player tracking information stored on the portable wireless device, cols. 5:56-6:6, 10:45-11:5, 17:44-18:2.), **operating the gaming machine in a first mode associated with the passerby** (Hedrick discloses a first mode of an attract mode to attract an individual, Hedrick, col. 12:23-20.);

in response to detecting the presence of the passerby by at least one of detecting the presence of the passerby, operating the gaming machine in a second mode associated with the passerby (player tracking session mode, Hedrick, col. 17:34-18:5), **the second mode being different from the first mode** (attract mode is different from player tracking session mode).

Hedrick discloses the claimed invention as discussed but fails to that the operation of the first mode occurs in response to detecting the passerby within a first predetermined distance, operation of the second mode occurs in response to detecting the passerby within a second predetermined distance, the first predetermined distance being different from the second predetermined distance. Nevertheless, in an analogous art to operating electrical device, Rantze discloses **the operation for the terminal changes based on at least the distance of the detection of a user**, cols. 2:39-48, 4:18-21, 4:29-32, 5:1-3. Thus **the first predetermined distance** is a distance where the kiosk detects a user and **the second predetermined distance** is closer to the electronic device (Rantze, cols. 2:39-48, 4:18-21, 4:29-32, 5:1-3). Rantze's method of operating the kiosk at different modes based on different distances allows the apparatus to operate more effectively by accommodating the user. Therefore it would have been obvious to one of ordinary skilled in the art at the time invention was made to modify Hedrick's method of operating a gaming terminal by establishing a wireless transmission link with a portable data unit and incorporate Rantze's method of operating a device differently based on the user's distance in order to operate the gaming device more effectively based on the user's location. Although Hedrick's detection system is

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directed to a wireless device, and Rantze detection system is directed to proximity detectors, Sizer suggest that different type of detection system can equally be used (col. 3:58-67) to operate an electrical device in different modes (col. 17:16-26), including wireless portable devices (col. 6:11-17). Thus Sizer teaches that it would have been obvious to modify Hedrick's method of operating a gaming terminal by establishing a wireless transmission link with a portable data unit and incorporate Rantze's method of operating an electronic device at different modes based on different distances.

Claims 111, 116, 122. Rantze discloses that **the second predetermined distance is closer to the electronic device or less than the first predetermined distance** (Rantze cols. 2:39-48, 4:18-21, 4:29-32). Sizer also discloses that the operation is based on position/distance of detection, where one distance is less than another, col. 17:16-23).

Claim 112. Hedrick discloses **a method of operating a gaming machine** (Hedrick, 100 in Fig. 1), comprising:

detecting, via a the gaming machine, the presence of a first passerby by at least one of the presence of the passerby (Hedrick discloses an individual carries a portable wireless device which wirelessly communicates with the gaming machine (cols. 5:56-6:6, 10:45-11:5, 17:44-18:2.),

in response to the detecting the presence of the first passerby, modifying the operation of the gaming machine according to an attract mode specific to the

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first passerby (Hedrick discloses operating an attract mode to attract an individual, Hedrick, col. 12:23-20.) **based on first information wirelessly communicated between the gaming machine and a first portable data unit carried by the first passerby** (Hedrick discloses a user is detected by detecting a portable wireless device and transferring player tracking information stored on the portable wireless device, cols. 5:56-6:6, 10:45-11:5, 17:44-18:2.);

detecting, via the gaming machine, the presence of a second passerby by at least one of the presence of the passerby (Hedrick discloses a user is detected by detecting a portable wireless device and transferring player tracking information stored on the portable wireless device, cols. 5:56-6:6, 10:45-11:5, 17:44-18:2. Thus a second user/passerby can be detected.);

in response to detecting the second passerby, modifying the operation of the gaming machine according to a play mode (Hedrick discloses operating the gaming machine to player tracking session play mode associated with the player's account is initiated, col. 17:34-18:5.) **specific to the second passerby based on second information wirelessly communicated between the gaming machine and a second portable data unit carried by the second passerby** (The play mode is specific to the player tracking information stored on the portable wireless device, Hedrick, cols. 5:56-6:6, 10:45-11:5, 17:44-18:2).

Hedrick discloses the claimed invention as discussed but fails to that the operation of the first mode occurs in response to detecting the passerby within a first predetermined distance, the passerby not interacting with the gaming machine,

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operation of the second mode occurs in response to detecting the passerby within a second predetermined distance, the first predetermined distance being different from the second predetermined distance. Nevertheless, in an analogous art to operating electrical device, Rantze discloses **the operation for the terminal changes based on at least the distance of the detection of a user**, cols. 2:39-48, 4:18-21, 4:29-32, 5:1-3. Thus **the first predetermined distance** is a distance where the kiosk detects a user and **the second predetermined distance** is closer to the electronic device (Rantze, cols. 2:39-48, 4:18-21, 4:29-32, 5:1-3). The passerby can be walking in proximity/towards, away, walking by or within the terminal and **not be interacting with the terminal** (Rantze, cols. 2:39-48, 4:18-32). Rantze's method of operating the kiosk at different modes based on different distances allows the apparatus to operate more effectively by accommodating the user. Therefore it would have been obvious to one of ordinary skilled in the art at the time invention was made to modify Hedrick's method of operating a gaming terminal by establishing a wireless transmission link with a portable data unit and incorporate Rantze's method of operating a device differently based on the user's distance in order to operate the gaming device more effectively based on the user's location. Although Hedrick's detection system is directed to a wireless device, and Rantze detection system is directed to proximity detectors, Sizer suggest that different type of detection system can equally be used (col. 3:58-67) to operate an electrical device in different modes (col. 17:16-26), including wireless portable devices (col. 6:11-17). Thus Sizer teaches that it would have been obvious to modify Hedrick's method of operating a gaming terminal by establishing a wireless transmission link with

a portable data unit and incorporate Rantze's method of operating an electronic device at different modes based on different distances.

Claim 120. Hedrick, **discloses the method of operating a gaming terminal** (Hedrick, 100 in Fig. 1), **comprising:**

in response to wirelessly detecting the presence of the passerby by at least one of the detecting the presence of the passerby (Hedrick discloses an individual carries a portable wireless device which wirelessly communicates with the gaming machine, cols. 5:56-6:6, 10:45-11:5, 17:44-18:2.), **operating the gaming terminal in a first mode associated with the passerby such that the gaming terminal interacts with the passerby in a first manner** (Hedrick also discloses a first mode of an attract mode to attract an individual, col. 12:23-20).]; and

in response to wirelessly detecting the presence of the passerby by at least one of the detecting the presence of the passerby, operating the gaming terminal in a second mode associated with the passerby such that the gaming terminal interacts with the passerby in a second manner different from the first manner (Hedrick discloses the gaming terminal is operated to initiate play of the player tracking session mode associated with the player's account, col. 17:34-18:5).

Hedrick discloses the claimed invention as discussed but fails to that the operation of the first mode occurs in response to detecting the passerby within a first predetermined distance, the operation of the second mode occurs in response to detecting the passerby within a second predetermined distance, the first predetermined

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distance being different from the second predetermined distance. Nevertheless, in an analogous art to operating electrical device, Rantze discloses **the operation for the terminal changes based on at least the distance of the detection of a user**, cols. 2:39-48, 4:18-21, 4:29-32, 5:1-3. Thus **the first predetermined distance** is a distance where the kiosk detects a user and **the second predetermined distance** is closer to the electronic device (Rantze, cols. 2:39-48, 4:18-21, 4:29-32, 5:1-3). Rantze's method of operating the kiosk at different modes based on different distances allows the apparatus to operate more effectively by accommodating the user. Therefore it would have been obvious to one of ordinary skilled in the art at the time invention was made to modify Hedrick's method of operating a gaming terminal by establishing a wireless transmission link with a portable data unit and incorporate Rantze's method of operating a device differently based on the user's distance in order to operate the gaming device more effectively based on the user's location. Although Hedrick's detection system is directed to a wireless device, and Rantze detection system is directed to proximity detectors, Sizer suggest that different type of detection system can equally be used (col. 3:58-67) to operate an electrical device in different modes (col. 17:16-26), including wireless portable devices (col. 6:11-17). Thus Sizer teaches that it would have been obvious to modify Hedrick's method of operating a gaming terminal by establishing a wireless transmission link with a portable data unit and incorporate Rantze's method of operating an electronic device at different modes based on different distances.

Claim 121. The combination of Hedrick, Rantze and Sizer discloses the first mode includes **establishing an attract mode** (Hedrick, col. 12:23-20; Rantze col. 2:44-45, 5:1-3) **wireless link when a portable data unit carried by the passerby is detected** (Hedrick , cols. 5:56-6:6. 17:44-18:5) **for at least one of within the first predetermined distance of the gaming terminal or detected for at least the first predetermined period of time** [Rantze discloses at detecting a passerby for at least a first predetermined distance (Rantze, cols. 2:39-48, 4:18-21, 4:29-32). The passerby can be walking in proximity/towards, away, walking by or within the terminal and not be interacting with the terminal (Rantze, cols. 2:39-48, 4:18-32). Sizer also discloses detection of a first predetermined distance (position/distance of detection col. 17:16-23).].

Claims 103, 114. The combination of Hedrick, Rantze and Sizer discloses **receiving a wager from the passerby** (Hedrick, cols. 17:44-18:19).

Claim 104. The combination of Hedrick, Rantze and Sizer discloses **operating the gaming machine in a first mode includes inviting the passerby to play the gaming machine** (attract mode as discussed above).

Claims 106, 123. The combination of Hedrick, Rantze and Sizer discloses **inviting the passerby, based on the identity of the passerby, to play the gaming**

machine (Hedrick discloses that the detection occurs identifying the player tracking information/account, col. 12:23-30, 12:36-59, 17:36-18:19).

Claims 107, 117. The combination of Hedrick, Rantze and Sizer discloses **operating the gaming machine in a first mode includes inviting the passerby based on the identity of the passerby, to play the gaming machine** (see rejection for claims 102 and 106 above).

Claims 108, 113. The combination of Hedrick, Rantze and Sizer discloses **encrypting data communicated across the wireless communication link into ciphered data** (Hedrick, col. 15:34-38).

Claims 109, 115. The combination of Hedrick, Rantze and Sizer discloses **operating the gaming machine in a first mode includes attracting the passerby to interact with the gaming machine** (As discussed above in claim 102, Hedrick discloses an attract mode. This attract mode may cause the player to interact with the gaming machine.).

Claims 110, 118, 124. The combination of Hedrick, Rantze and Sizer discloses **attracting the passerby includes the gaming machine conveying a message to the passerby** (Hedrick discloses a message in lights or sound to convey the message that the gaming machine wants attention to the player, col. 12:27-30).

Claims 119, 125. The combination of Hedrick, Rantze and Sizer discloses the method of method of operating a gaming terminal by establishing a wireless transmission link with a portable data unit but fails to specifically teach modifying the operating of the gaming machine according the play mode includes disregarding individuals with a portable data unit who pass by the gaming machine at greater than for at least one of the second predetermined distance or disregarding individual who pass by the gaming machine for less than second predetermined period of time.

Nevertheless, such limitations would have been obvious to one of ordinary skilled in the art. The combination of Hedrick, Rantze and Sizer discloses a method of operating a gaming terminal in which operations modes are changed according the distance of the user. **The modes of the operations are changed because the gaming terminal performs one mode at a time. When the gaming terminal is in play mode, the gaming terminal is occupied by the player. Switching the mode while a player is in play mode with the gaming terminal will disrupt the player's game. Thus it would have been obvious to disregard other detections while in the gaming terminal is in play mode in order to keep the play mode running when a user is playing a game.** Therefore it would have been obvious to one of ordinary skilled in the art at the time the invention was made to modify the combination of Hedrick, Rantze and Sizer's method of method of operating a gaming terminal and disregard individuals with a portable data unit who pass by the gaming machine in order to not disrupt the game that's in play.

(10) Response to Argument

A. Claim 101-104 and 106-125 Rejected under 35 U.S.C. 103(a) as unpatentable over Hedrick in view of Rantze and Sizer.

The Appellant argues that the Rantze and Sizer references are directed unrelated retail merchandizing field. The Appellant also argues that neither Rantze nor Sizer allows any information exchange between a customer and the respective machines for the purpose of effecting machine operation associated with the individual.

However, it appears that the Appellant is misinterpreting the rejection. The Rantze reference is not relied upon to teach the claim limitation of exchanging information between a customer and the respective machines. The primary reference, Hedrick, discloses exchanging information between a customer and a gaming machine using a portable device (cols. 5:56-6:6, 10:45-11:5, 17:44-18:2). Hedrick also discloses different operations of the gaming machine (attract mode to attract an individual, col. 12:23-20; and player tracking session mode associated with the player's account, col. 17:34-18:5). The Rantze reference is relied upon to teach electronic devices operating the different modes based on a user's distance (Rantze, cols. 2:39-48, 4:18-21, 4:29-32, 5:1-3). Hedrick's reference is in the field of electronic gaming machines. Electronic gaming machines are electrical devices that provide services (electronic

game/entertainment service) to a customer. The Rantze reference is directed to electronic retail terminals. Rantze retail terminals are also directed to electronic devices that provides services (such as product information) to a customer. Thus both references are directed to an electronic devices that provides a service to a user. Furthermore, Hedrick's gaming device can operate in a player attract mode (col. 12:23-20). Rantze retail terminal can also operate in an attract mode (Rantze col. 2:44-45, 5:1-3). Thus both references are directed to the field of marketing in which an electronic device operates in attract mode. In addition, the Sizer reference teaches that electronic devices can operate in different modes based on a user's distance (col. 17:16-26). Sizer teaches that different form of detection can be used (Sizer, col. 3:57-67). The detection can be in form of a sensor which detects a person in a detection area (similar to Rantze's proximity detector), or can use a portable device such as smart cards or RF cards (Sizer, col. 6:11-17). Sizer explicitly discloses that the information contained in the card is used by the device (Sizer, col. 6:11-17). Thus Sizer also discloses that information is transferred from the portable device to the electronic device.

1. The Deficiencies of the Prior Art.

The Appellant argues that Hedrick discloses transferring information from portable wireless device to a gaming terminal but fails to teach an attract mode or change or operation in response to detecting a portable data unit carried by a user

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within a predetermined distance. In response to the Appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As discussed in the rejection above, Hedrick reference is not relied upon to teach the change of operation based on a user's distance. The Rantze, and Sizer reference teaches changing the operation of an electronic device based on a user's distance (Rantze, cols. 2:39-48, 4:18-21, 4:29-32, 5:1-3; Sizer, 17:16-23). Thus the combination of Hedrick, Rantze and Sizer discloses the claimed limitation.

The Appellant also argues that Rantze is a retail information system and does not fall within the wager game art as Hedrick or the present claims.

However, as discussed above, Hedrick's reference is in the field of electronic gaming machines. Electronic gaming machines are electrical devices that provide services (electronic game/entertainment service) to a customer. The Rantze reference is directed to electronic retail terminals. Rantze retail terminals are also directed to electronic devices that provides services (such as product information) to a customer. Thus both references are directed to an electronic devices that provides a service to a user. Furthermore, Hedrick's gaming device can operate in a player attract mode (col. 12:23-20). Rantze retail terminal can also operate in an attract mode (Rantze col. 2:44-45, 5:1-3). Thus both references are directed to the field of marketing in which an electronic device operates in attract mode.

The Appellant argues that Rantze discloses an imprecise detection mechanism that is incapable of identifying whether an object is a person with certainty, let alone be capable of ascertaining the identity of such a person.

However, Rantze discloses that the precision of the detection is at least capable of determining a customer based on the proximity, distance, or whether the customer is walker towards, walking away, or walking by the retail terminal (Rantze, col. 4:18-33). Regarding, the argument that Rantze's system is incapable ascertaining the identity of a person, the Rantze reference is not relied upon to teach the limitation of ascertaining the identity of the person. As discussed above, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. The primary reference Hedrick, discloses that a portable wireless device is used to identify a user with the player tracking/account information within the portable device (cols. 5:56-6:6, 10:45-11:5, 17:44-18:2). Thus the combination of Hedrick, Rantze and Sizer discloses the claimed invention.

The Appellant also argues that Rantze function by transmitting waveforms of different frequencies, and thus cannot determine the identity of a person. In addition, the Appellant argues that Sizer is similar to Rantze's detection sensor and cannot be used to determine the identity of a person. However, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of

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the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case, Rantze reference is relied upon to teach the method of operating a device at different modes based on different distances. One of ordinary skilled in the art would know how to modify's Hedrick's detection system which explicitly teaches exchanging information (Hedrick, cols. 5:56-6:6, 10:45-56, 17:44-18:2) and incorporate Rantze's method of operating a device at different modes based on different distance accordingly. **The Sizer reference has been relied upon to support that different type of detection systems can be used to change the operation of an electronic device.** Sizer discloses that ultra sonic sensor can be used to detect the presence of a person (Sizer, col. 3: 58-67), or smart cards or RF cards can be used to detect the presence of person (Sizer, col. 6:11-18). Various types of detection means can be used, including Hedrick's wireless device. The detection means may take many forms (Sizer, col. 3:58). **Thus, regardless of the specific type of detection system the Rantze reference teaches, one of ordinary skilled in the art would know how to modify's Hedrick's detection system that exchange player information from a portable wireless device with a gaming machine, and incorporate Rantze's method of operating a device at different modes based on different distance accordingly.** It is also noted that the Appellant's form of detection includes radio frequency (RF) (abstract), and Bluetooth (paragraph 13 of US 2004/0029635). Hedrick also discloses that the portable device may transfer information using RF and Bluetooth (Hedrick, col. 6:1-6). Sizer also discloses that RF may be used (Sizer, col. 6:11-17). Thus at least

Hedrick and the Sizer references disclose the same type of detection system as described in the Appellant's specification.

2. The wireless communication system of Hedrick cannot be combined with the passive detection system in Rantze or Sizer.

As discussed above, the Appellant argues that the references of Hedrick cannot be combined with Rantze or Sizer since Hedrick's discloses the use of wireless identification device for sending player tracking information to a player tracking unit, and Rantze is directed to motion detection via reflected waves. However as discussed above, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case, Rantze reference is relied upon to teach the method of operating a device at different modes based on different distances. One of ordinary skilled in the art would know how to modify's Hedrick's detection system which explicitly teaches exchanging information (Hedrick, cols. 5:56-6:6, 10:45-56, 17:44-18:2) and incorporate Rantze's method of operating a device at different modes based on different distance accordingly. **The Sizer reference has been relied upon to support that different type of detection systems can be used to change the operation of an electronic device.** Sizer discloses that ultra sonic sensor can be used to detect the presence of a

person (Sizer, col. 3: 58-67), or smart cards or RF cards can be used to detect the presence of person (Sizer, col. 6:11-18). Various types of detection means can be used, including Hedrick's wireless device. The detection means may take many forms (Sizer, col. 3:58).

Thus, regardless of the specific type of detection system the Rantze reference teaches, one of ordinary skilled in the art would know how to modify's Hedrick's detection system that exchange player information from a portable wireless device with a gaming machine, and incorporate Rantze's method of operating a device at different modes based on different distance accordingly. It is also noted that the Appellant's form of detection includes radio frequency (RF) (abstract), and Bluetooth (paragraph 13 of US 2004/0029635). Hedrick also discloses that the portable device may transfer information using RF and Bluetooth (Hedrick, col. 6:1-6). Sizer also discloses that RF may be used (Sizer, col. 6:11-17). Thus at least Hedrick and the Sizer references disclose the same type of detection system as described in the Appellant's specification.

a. The inability to combine references physically should be factored in a lack of suggestion to combine to one of ordinary skill in the art.

The Appellant argues that the there is not suggestion to combine the references since they are not physically combinable. However as discussed above, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed

invention must be expressly suggested in any one or all of the references (see arguments above).

More specifically, the Appellant argues that the specific purpose of each detection system must be factored in the determination of what whether one detection system should be substituted for another because the claimed combination cannot change the principle of operation of the primary reference or render the reference inoperable for its intended purpose.

However, each detection system has been considered. As explicitly taught by Sizer, Sizer indicates that detection means may take many forms (col. 3:59-60). Thus ultra sonic sensors (Sizer, col. 3:59) that are similar to Rantze's detection system, or wireless portable devices (Sizer, col. 6:11-17) that are similar to Hedrick's detection system can be interchangeably be used. When modifying Hedrick's detection system that exchange player information from a portable wireless device with a gaming machine, and incorporating Rantze's method of operating a device at different modes based on different distance, the combination does not change the principle of operation of the primary reference or render the reference inoperable for its intended purpose. The principle of operation of the intended purpose of Hedrick's wireless portable device is to wirelessly provide player tracking information to the gaming machine as indicated in the Appellant's arguments (Appeal Brief Filed, 7/24/2009, page 7 lines 4-8).

Modifying Hedrick's wireless portable device to operate the gaming device at different modes based upon the user's distance would not prevent the user to use the

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wireless portable device to wirelessly provide player tracking information to the gaming machine.

b. The differences between the “services” in Rantze and the gaming machines in Hedrick would be a factor against combining the references.

As discussed above, the Appellant argues that Hedrick is directed gaming machines, whereas Rantze and Sizer are directed to retail marketing. However, as discussed above, Hedrick's reference is in the field of electronic gaming machines. Electronic gaming machines are electrical devices that provide services (electronic game/entertainment service) to a customer. The Rantze reference is directed to electronic retail terminals. Rantze retail terminals are also directed to electronic devices that provides services (such as product information) to a customer. Thus both references are directed to an electronic devices that provides a service to a user. Furthermore, Hedrick's gaming device can operate in a player attract mode (col. 12:23-20). Rantze retail terminal can also operate in an attract mode (Rantze col. 2:44-45, 5:1-3). Thus both references are directed to the field of marketing in which an electronic device operates in attract mode.

3. The combination of Hedrick, Rantze and Sizer does not anticipate the element of “modifying the operation of the machine” based on the individual in claims 101, 102, 112, and 120.

The Appellant argues that the combination of Hedrick, Rantze and Sizer fails to teach changing the operation of the gaming terminal to a first mode associated with the individual or a second mode associated with the individual.” However, as discussed in the rejection above, the Hedrick discloses first mode associated with the individual (attract mode to attract an individual, Hedrick, col. 12:23-20), and a second mode associated with the individual (a player tracking session mode associated with the player's account, Hedrick, col. 17:34-18:5). As discussed above, Rantze and Sizer discloses that operation of the gaming terminal changes based upon the user's detection (Rantze, cols. 2:39-48, 4:18-21, 4:29-32, 5:1-3; Sizer, col. 17:17-27).

The Appellant also argues that Sizer's different type of information broadcast does not constitute a modification in the operation of the machine. However, Sizer discloses that different messages are delivered depending on where a target is positioned (col. 17:16-26). The messages are dependent on when a person is located at a specific location. A user controls when the different messages are displayed by being at a certain location. Thus Sizer's changing messages does constitute a modification in the operation of the machine since the operation of when a specific message is displayed is controlled.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

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